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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

JAN - 3 2005

DOCKETED BY

IN THE MATTER OF THE COMPLAINT ) DOCKET NO. E-04230A-04-0798  
OF MOHAVE ELECTRIC )  
COOPERATIVE, INC. AGAINST ) **MOTION FOR LEAVE TO**  
UNISOURCE ENERGY CORPORATION ) **FILE FIRST AMENDED**  
AND UNS ELECTRIC, INC. FOR THE ) **COMPLAINT**  
POTENTIAL INTERFERENCE WITH )  
THE CERTIFICATE OF CONVENIENCE )  
AND NECESSITY )

Pursuant to Arizona Administrative Code, Rule R14-3-101 and Rule 15(a), Arizona Rules of Civil Procedure, Mohave Electric Cooperative, Inc., ("Mohave"), through undersigned counsel, hereby moves for Leave to File its First Amended Complaint to add UNS Electric, Inc. as a respondent.

Under to Rule 15 (a), leave to amend should be freely given when justice requires. In the instant matter, UNS Electric, Inc. has filed a pleading stating it is the proper party. Amendments of the Complaint is necessary to: 1) add UNS Electric, Inc. to the caption and in the body of the Complaint and 2) to reflect the substitution of Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. for Martinez & Curtis, P.C., together with new contact information for Mr. Curtis and Mr. Sullivan. A copy of the proposed First Amended Complaint without exhibits, is attached as Attachment 1.

1 WHEREFORE, Mohave respectfully moves that it be granted leave to file its  
2 First Amended Complaint.

3 RESPECTFULLY SUBMITTED, this 3rd day of January, 2005.

4  
5 CURTIS, GOODWIN, SULLIVAN, UDALL &  
6 SCHWAB, P.L.C.

7  
8 By 

9 Michael A. Curtis  
10 William P. Sullivan  
11 2712 North Seventh Street  
12 Phoenix, Arizona 85006-1090  
13 Attorneys for Mohave Electric Cooperative,  
14 Inc.

15 **Original and thirteen (13) copies of**  
16 **the foregoing filed this 3rd day of January, 2005 with:**

17 Docket Control Division  
18 ARIZONA CORPORATION COMMISSION  
19 1200 West Washington Street  
20 Phoenix, Arizona 85007

21 **Copies of the foregoing hand-delivered and/or mailed**  
22 **this 3rd day of January, 2005 to:**

23 Lyn A. Farmer, Esq.  
24 Chief Administrative Law Judge, Hearing Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
Phoenix, Arizona 85007

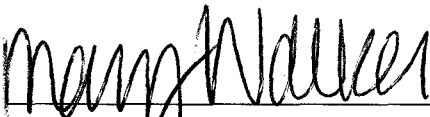
Christopher Kempley, Esq.  
Chief Counsel, Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Ernest Johnson  
2 Director, Utilities Division  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 Michelle Livengood, Esq.  
7 One South Church Avenue, Suite 200  
8 Mail Stop UE201  
9 Post Office Box 711  
10 Tucson, Arizona 85702  
11 Attorneys for UNS Electric, Inc.

12 Thomas H. Campbell, Esq.  
13 Lewis & Roca LLP  
14 40 North Central Avenue  
15 Phoenix, Arizona 85004-4429  
16 Attorneys for UNS Electric, Inc.

17 Tom Ferry  
18 UNS Electric, Inc.  
19 Post Office Box 3099  
20 Kingman, Arizona 86402

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22 \_\_\_\_\_  
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2 **BEFORE THE ARIZONA CORPORATION COMMISSION**  
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5 **COMMISSIONERS**

6 MARC SPITZER, CHAIRMAN

7 WILLIAM A. MUNDELL

8 JEFF HATCH-MILLER

9 MIKE GLEASON

10 KRISTIN K. MAYES

11 IN THE MATTER OF THE ) DOCKET NO. E-04230A-04-0798  
12 COMPLAINT OF MOHAVE )  
13 ELECTRIC COOPERATIVE, INC. )  
14 AGAINST UNISOURCE ENERGY )  
15 CORPORATION AND UNS ) **PROPOSED FIRST**  
16 ELECTRIC, INC. FOR THE ) **AMENDED COMPLAINT**  
17 POTENTIAL INTERFERENCE WITH )  
18 THE CERRTIFICATE OF )  
19 CONVENIENCE AND NECESSITY )

20  
21 Mohave Electric Cooperative, Inc., an Arizona not for profit rural  
22 electric cooperative ("Mohave"), by and through its Counsel undersigned, hereby files  
23 its complaint against UniSource Energy Corporation and its subsidiary, UNS Electric,  
24 Inc. (collectively referred to as "UniSource") pursuant to A.R.S. §§ 40-202, 40-203,  
25 40-246, 40-249, 40-281, 40-322, 40-331, 40-332, 40-421 and A.A.C. R14-3-101et  
26 seq. and in support thereof alleges as follows:

1. Mohave is an Arizona rural electric cooperative certificated by the  
Arizona Corporation Commission (the "Commission") to provide electric services in

1 sections of Mohave County, portions of Yavapai County, and portions of Coconino  
2 County.

3  
4 2. In furtherance of the public interest and in performance of its  
5 obligations as a Public Service Corporation, Mohave has constructed and is  
6 constructing electric distribution lines, plant systems and metering facilities, and is  
7 ready, willing and able to serve customers in accordance with the rules and  
8 regulations of the Commission in the areas within its certificated area.  
9

10 3. By Decision No. 58798, dated October 14, 1994, the Commission  
11 transferred a portion of Citizens Utilities Company's ("Citizens") Certificate of  
12 Convenience and Necessity ("CC&N") consisting of approximately 1,047 acres of  
13 land in Sections 4, 5 and 9, Township 20 North, Range 17 West, Mohave County,  
14 Arizona (the "Transferred Area") to Mohave. A copy of Decision No. 58798 is  
15 attached as Exhibit 1.<sup>1</sup>  
16

17 4. Mohave acquired the Transferred Area in order to provide electric  
18 service to lands being developed by North Star Steel Company ("North Star"). The  
19 Commission approved the service agreement between Mohave and North Star by  
20 Decision No. 58795, dated October 14, 1994.  
21

22 5. Since October 14, 1994, Mohave has been the sole power supplier of all  
23 customers located in the Transferred Area, including, without limitation, North Star  
24

25  
26 <sup>1</sup> All Exhibits are the same as attached to the original complaint and are not resubmitted herewith to avoid unnecessary duplication and storage costs.

1 and a few commercial customers, such as Roadrunner Trucking. However, Mohave  
2 purchased power from Citizens for resale in the Transferred Area. In order to make  
3 power purchases from Citizens, Mohave provided Citizens \$25,942.22 as a  
4 contribution-in-aid-of-construction in exchange for which Citizens constructed the  
5 necessary primary distribution and metering facilities.  
6

7 6. Citizens provided service to Mohave until approximately 2002, when  
8 North Star and the surrounding commercial customers halted business, at least  
9 temporarily, and power purchases from Citizens became, temporarily unnecessary.  
10

11 7. On March 3, 2003, after first filing an application with FERC for  
12 approval of its sale to UniSource Energy Corporation, Citizens Communications  
13 Company made a summary filing of its retail Rate Schedules 45 and 46 with the  
14 Federal Energy Regulatory Commission ("FERC"). A copy of the Citizens filing with  
15 FERC is attached as Exhibit 2. Citizens represented to FERC that, in addition to  
16 temporary North Star construction power, it provided Mohave power "to serve a few  
17 additional commercial customers (a few construction trailers and a trucking company,  
18 Roadrunner Trucking)" representing retail loads of between 100-200 kW. Retail Rate  
19 Schedules 45 and 46, which now under UniSource may also include a surcharge to  
20 recover Enron related losses, may exceed Mohave's current retail rates.  
21  
22

23 8. Citizens' Certificate and electric operations in Arizona have been  
24 acquired by and transferred to UniSource. See, Commission Decision No. 66028.  
25  
26

1           9.       In or about May of 2004, Central Trucking ("CTI") approached  
2 Mohave about receiving electric service at the facilities previously operated by  
3 Roadrunner Trucking located in the Transferred Area. In July of 2004, Mohave  
4 received an executed Engineering Services Agreement and deposit for service from  
5 CTI. Shortly thereafter, Mohave contacted UniSource Energy, Inc. a subsidiary of  
6 UniSource Energy Corporation, and requested re-establishment of primary metering at  
7 the location where it had previously received service from Citizens and to provide  
8 wholesale service under an Open Access Transmission Tariff ("OATT"). After  
9 waiting more than a month for UniSource to activate service, Mohave made a written  
10 request for service. A copy of the September 12, 2004 request is attached as Exhibit  
11 3.  
12

13  
14  
15           10.     UniSource has refused to initiate service to Mohave and by letter dated  
16 October 6, 2004 has stated its intent to instead file an application with the  
17 Commission to "reclaim" the Transferred Area. A copy of the October 6, 2004 letter  
18 from T. Ferry, V.P. and General Manager of UniSource to T. Longtin of Mohave is  
19 attached as Exhibit 4.  
20

21           11.     On October 18, 2004, CTI filed a request for Commission assistance  
22 stating, in part: "In summary, Unisource [sic] wants this territory and is holding  
23 Mohave at a ransom to provide service to us. We are tired of being caught in the  
24 middle of a territory struggle. We cannot afford to run new lines at the cost of  
25  
26

1 \$600,00.00.” A copy of the October 18, 2004 letter to J. Woller is attached as  
2 Exhibit 5.

3  
4 12. UniSource is unilaterally and arbitrarily refusing to furnish Mohave  
5 electric energy. UniSource is holding a prospective Mohave customer in need of  
6 immediate service hostage, while UniSource pursues its intent to “reclaim” the  
7 Transferred Area.

8  
9 13. Mohave has made a good faith effort to resolve the matter with  
10 UniSource. Mohave first requested service under an OATT. UniSource has refused  
11 to provide such service. Mohave then offered to negotiate a system-wide border area  
12 agreement with UniSource in good faith, whereby a process would be established to  
13 allow UniSource and Mohave to temporarily serve the other’s customers on the  
14 fringes of their respective service areas, where such service makes economic sense to  
15 the prospective customer and the respective utilities. UniSource has refused to  
16 consider a system-wide border area agreement. Mohave has also indicated a  
17 willingness to extend Mohave’s facilities under Mohave’s extension policy, but such  
18 improvements are estimated to cost CTI approximately \$600,000.00.

19  
20  
21 14. As yet another alternative, Mohave would be willing to accept service  
22 from UniSource under its Rate Schedules 45 and 46, provided the Commission  
23 authorizes Mohave to collect through a surcharge from CTI the actual costs incurred  
24 by Mohave, including a reasonable margin if these UniSource rates exceed Mohave’s  
25  
26



1 cost of power. Otherwise, Mohave's customers would be subsidizing the service to  
2 CTI.

3  
4 15. UniSource's activities with respect to CTI are calculated to interfere  
5 with the certificated area of Mohave and the contractual relationship between CTI and  
6 Mohave in violation of Mohave's constitutionally protected property rights embodied  
7 by the grant of a CC&N.

8  
9 16. The actions of UniSource, as specified above, threaten to cause  
10 immediate irreparable injury, loss and damage to Mohave and Mohave's customers, to  
11 wit: the alienation of property owners within Mohave's certificated area, the  
12 infringement upon Mohave's certificated area by another Public Service Corporation,  
13 and compelling one (1) customer, CTI, to either forego service or pay \$600,000 for  
14 the installation of a transmission line that can be avoided if UniSource will just  
15 provide service to Mohave under its Rate Schedules 45 and 46.

16  
17 17. The power needs of CTI are immediate, and all of the injuries which  
18 have occurred and are occurring as referenced above are uncompensable after the fact;  
19 therefore, Mohave seeks an Order from the Commission compelling UniSource to: a)  
20 provide service to Mohave and permitting Mohave to recover the cost thereof,  
21 including a reasonable margin, or b) negotiate, in good faith, a mutually acceptable  
22 system-wide border area agreement with Mohave.  
23  
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1           18.    The names, mailing addresses and telephone numbers of the persons  
2           upon whom service of all documents may be made are:

3                   Michael A. Curtis  
4                   William P. Sullivan  
5                   Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.  
6                   2712 North Seventh Street  
7                   Phoenix, Arizona 85006-1090  
8                   (602) 393-1700  
9                   E-Mail:       mcurtis401@aol.com  
                      wsullivan@cgsuslaw.com

10                   WHEREFORE, Mohave Electric Cooperative, Inc. requests the Arizona  
11           Corporation Commission:

- 12                   1. After notice and opportunity to be heard, order UniSource to provide  
13                   service to Mohave and allow Mohave to collect from CTI any excess  
14                   power costs through a surcharge, plus a reasonable margin, until an  
15                   OATT can be established by UniSource or until Mohave serves its  
16                   consumer directly;
- 17                   2. Order UniSource to negotiate in good faith with Mohave to establish  
18                   a system-wide border area agreement;
- 19                   3. Establish such procedures as are reasonable and necessary to  
20                   expeditiously resolve this matter; and
- 21                   4. Grant such further relief as the Commission deems just and  
22                   necessary.

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RESPECTFULLY SUBMITTED, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CURTIS, GOODWIN, SULLIVAN, UDALL  
& SCHWAB, P.L.C.

By \_\_\_\_\_

Michael A. Curtis  
William P. Sullivan  
2712 North Seventh Street  
Phoenix, Arizona 85006-1090  
Attorneys for Mohave Electric  
Cooperative, Inc.

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**PROOF OF AND  
CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and fifteen (15) copies of the above to:

Docket Control Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**Copies of the foregoing mailed  
this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ to:**

Thomas Ferry  
Vice-President & General Manager  
UniSource Energy Corporation  
2498 Airway Avenue  
P.O. Box 3099  
Kingman, Arizona 86402-3099

Geneva Davis,  
Controller  
Central Trucking, Inc.  
11930 N. Hartman Drive  
Edinburgh, Indiana 46124

Christopher C. Kempley, Chief Counsel  
Legal Division – Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Janie Woller  
Consumer Services - Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

\_\_\_\_\_